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must not be merely cumulative, corroborative, or collateral; and it must be evidence that could not have been discovered before the trial by the use of reasonable diligence.

8. CRIMINAL LAW—*New trial—verdict contrary to evidence—appellate court.* A new trial, on the ground that the verdict is contrary to the evidence, ought to be granted only in case of plain deviation from right and justice. And the appellate court will not set aside a verdict on such ground, except where the jury have plainly decided against the evidence, or without evidence. In the case at bar, the testimony, as a whole, produces a moral certainty that the accused is guilty beyond a reasonable doubt.

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COCHRAN v. RICHMOND & ALLEGHANY R. Co.—Decided at Richmond, April 18, 1895.—*Keith, P.*

1. TRUSTEES—*Attorneys fees—payment out of trust fund.* Trustees, who in good faith engage counsel to aid them in the execution of the trust, are entitled to pay them out of the trust fund, or to be reimbursed out of that fund for all expenses which they have incurred, including reasonable attorneys' fees. Upon the evidence in this case, the attorneys' fees were properly paid out of the trust fund.

2. TRUST FUNDS—*Payment into court—interest.* Where a trust fund has been paid into court by a purchaser of the trust property, but in consequence of resistance to the payment of proper charges on the fund it has remained idle in the hands of the court, the loss of interest must fall on the trust creditor who has resisted the charge.

3. TRUST FUND—*Loan to trust creditor—payment.* Where a trust fund is loaned to the trust creditor pending litigation over charges on the fund and its distribution, and on final settlement it is ascertained to belong to such creditor, and is not sufficient to pay his debt, the transaction should be treated as a payment on the debt as of the date of the loan, and not as a loan.

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MARSHALL v. PALMER.—Decided at Richmond, April 18, 1895.—*Riely, J.*

1. EJECTMENT—*Joint-tenant—form of action.* One joint-tenant cannot recover, in an action of ejectment in his own name, as sole plaintiff, the interests of himself and his co-tenants. He can only recover that to which he has the title, and if this be an undivided interest he must prove what his proportion is, else there must be judgment for the defendant.

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NORFOLK & WESTERN R. Co. v. CARTER.—Decided at Wytheville, July 11, 1895.—*Riely, J.*

1. PROCESS AGAINST A CORPORATION—*Service on agent under sec. 3227 of the Code.* When process to commence an action against a corporation is sued out and executed on an agent of the corporation, under section 3227 of the Code, less than ten days before the return day thereof, the proper course to be pursued is to

quash the return of the officer and remand the case to rules, and not dismiss the action.

2. *SURFACE WATER—Obstructing natural channel or watercourse—damages.* The owner of land has no right to interfere with the flow of surface water in a natural channel or watercourse, and if such flow be hindered or prevented so as to cause the surface water to accumulate in ponds and thereby injure the lands of another, the person causing such hindrance or obstruction is liable to the owner of the land for the injury occasioned thereby.

For a discussion of the rights and duties of land owners relating to surface water see opinion of the Court.

3. *RAILROADS—Purchase of right of way—injury to other lands in constructing roadbed.* Although a railroad company may have purchased from the owner a right of way over his land, for the purpose of constructing its roadbed, yet if, in constructing its roadbed, it deposits on the lands of such owner, without his consent, outside of the right of way so purchased, earth, stone, gravel or other matter, and allows it to remain there, the company is liable to the owner for the injury thereby sustained. Compensation for such injury is not included in assessing damages for right of way, and the plaintiff is not barred of his right to recover such compensation by the conveyance of the right of way to the defendant.

4. *BILL OF PARTICULARS—Office of—when should be objected to.* The office of a bill of particulars is to give a fuller and more particular specification of the matter contained in the declaration, or of the nature and extent of the injury which the plaintiff claims that he has sustained. An objection to a bill of particulars should be made before the trial begins.

5. *RAILROADS—Method of construction—adjacent land owners.* Whether a railroad is properly constructed or not, so far as it affects adjacent land owners, is to be determined by the duties and obligations which the law imposes upon the company, and not by the manner in which other roads are constructed.

6. *PASSWAY OF OWNER OVER HIS OWN LAND—Destruction of passway—damages.* Every man is entitled to a passway over his own land from one part of it to another, and if this be destroyed by another, the owner of the land is entitled to recover damages therefor, which are not adequately measured by the mere effect which such destruction may have on the value of the part thus made inaccessible.

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RISON, TRUSTEE, AND OTHERS V. MOON.—Decided at Richmond, April 25, 1895.—*Cardwell, J.:*

1. *CHANCERY JURISDICTION—Complete relief—mechanic's lien.* A court of equity, having taken jurisdiction of a suit in equity to enforce a mechanic's lien, and having the parties before it, should proceed to the determination of all the questions between them.

2. *MECHANIC'S LIEN—Sufficiency of account.*—Where a gross sum has been agreed for repairs to or improvements on a building, an account which states the agreed sum, but omits credits, is a sufficient compliance with the statute which requires "a true account" to be filed as the basis of a mechanic's lien, especially where no injury is done to the owner.